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8 *Michael Lowe, and Eric Cline*

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 KIMBERLY ANN NESKE, individually and  
as heir and as Special Administrator for THE  
12 ESTATE OF JAMES NESKE ,

13 Plaintiff,  
14 vs.

15 LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, et al.

16 Defendants.

Case No.: 2:21-cv-01315-RFB-BNW

**STIPULATION TO EXTEND  
DISCOVERY  
(Third Request)  
[ECF No. 18]**

17  
18 IT IS HEREBY STIPULATED AND AGREED between the parties that the discovery  
19 cut-off date of June 23, 2022, be continued for a period of ninety (90) days up to and including  
20 **August 22, 2022**, for the purpose of allowing the parties to complete written discovery, disclose  
21 expert witnesses, and take depositions of the parties.

22 **I. DISCOVERY COMPLETED TO DATE**

23 Plaintiff and Las Vegas Metropolitan Police Department, Michael Lowe and Eric Cline  
24 (“LVMPD Defendants”) have exchanged their initial Rule 26 Disclosures. Plaintiff has provided

1 four supplements and LVMPD Defendants have provided three supplements to their Rule 26  
2 Disclosures. Plaintiff served Interrogatories and Requests for Production of Documents  
3 individually on each LVMPD Defendant and responses were made. Plaintiff served a Second  
4 Request for Production of Documents on LVMPD which Defendants responded to. Plaintiff has  
5 served a second set of interrogatories, which require responses. The LVMPD Defendants served  
6 their initial written discovery requests (Interrogatories and Requests for Production of  
7 Documents) which the Plaintiff has recently responded to. The depositions of Defendants Eric  
8 Cline and Michael Lowe and non-party officers Det. Gary King, Lt. Brian Arizmendi, and  
9 witness Cody Kasper have been taken.

## 10 **II. DISCOVERY YET TO BE COMPLETED**

11 The parties will serve various third-party subpoenas and may serve additional written  
12 discovery on each other. The LVMPD Defendants will take the deposition of Plaintiff. Plaintiff  
13 will depose non-party witness Francisco Vidal and officer Jesse Reynolds, likely in early June,  
14 due to scheduling difficulties. The parties have retained experts and will provide timely expert  
15 reports. The parties will depose the others' experts.

## 16 **III. REASONS WHY REMAINING DISCOVERY HAS NOT BEEN COMPLETED**

17 The claims in this matter surround the death of a Clark County Detention Center  
18 ("CCDC") inmate while he was in custody. The death resulted in an in depth homicide  
19 investigation. As such, the information and materials surrounding the time period before, during  
20 and after the death involve voluminous documents and substantial information. It has taken time  
21 for the LVMPD Defendants to gather all materials related to this incident, review them (as many  
22 documents contain confidential information of non-parties) and disclose them to Plaintiff.

23 There is good cause to extend the expert disclosures, discovery cut off, dispositive  
24 motion, and pretrial order deadlines. LVMPD Defendants recognize that the parties are making

1 this request less than 21 days before the initial expert disclosure deadline of April 25, 2022,  
2 however LVMPD Defendants submit that good cause exists for the delay.

3 LR 26-3 states in relevant part:

4 A motion or stipulation to extend a deadline set forth in a discovery plan  
5 must be received by the court no later than 21 days before the expiration  
6 of the subject deadline. A request made within 21 days of the subject  
7 deadline must be supported by a showing of good cause. A request made  
after the expiration of the subject deadline will not be granted unless the  
movant also demonstrates that the failure to act was the result of excusable  
neglect.

8 There are multiple reasons this request is being made less than 21 days before the initial  
9 expert disclosure deadline. First, as explained above in the procedural history, both parties have  
10 been diligently engaging in discovery. During that time, Counsel has been busy preparing for  
11 trial in three (3) other cases and has had active motion practice in several other cases. Within the  
12 last twenty-one (21) days, Plaintiff has served her written discovery responses and a  
13 supplemental disclosure and Lt. Arizmendi's deposition was conducted. This deposition  
14 transcript and additional records need to be evaluated by experts for them to formulate their  
15 opinions. In addition, the discovery responses provided information needed to issue further  
16 written discovery and subpoenas.

17 In addition to this matter being complex, additional relevant discovery needs to be  
18 completed before experts can properly evaluate this case. Plaintiff has had difficulty locating a  
19 relevant witness, Francisco Vidal. Plaintiff served a subpoena on the State of Nevada's  
20 Department of Public Safety, Division of Parole and Probation (DPP) office for Vidal's contact  
21 information, and DPP sought a protective order from this court. Only recently has this Court  
22 ordered that DPP shall provide plaintiff's counsel with Vidal's contact information. Plaintiff has  
23 recently served additional interrogatories and has requested to depose another Clark County  
24 Detention Center Officer, Jesse Reynolds, although with scheduling challenges, this deposition

will likely not be able to occur until early June. As mentioned, Plaintiff's responses to written discovery were recently served on Defendants. These discovery responses provide information that will allow Defendant to serve subpoenas for records on third parties. The experts will need additional time to review the voluminous materials already produced and discovery that is yet to be obtained to prepare expert reports.

As such, the LVMPD Defendants submit that good cause exists. The parties have acted in good faith as evidenced by the voluminous disclosures and written discovery exchanged between the parties. The brief delay will not impede this matter and, in fact and will help the parties to fully conduct the discovery needed. Along those same lines, the delay and extension will not prejudice the Plaintiff or this Court.

#### IV. PROPOSED EXTENDED DEADLINES

The parties respectfully request this Court enter an order as follows:

Deadline	Current Date	Proposed New Date
Disclosure of Experts	April 25, 2022	Fri., July 22, 2022
Disclosure of Rebuttal Experts	May 25, 2022	Mon., Aug. 22, 2022
Discovery Cut Off	June 23, 2022	Weds., Sept. 21, 2022
Dispositive Motion Deadline:	July 25, 2022	Fri., Oct. 21, 2022
Pre-Trial Order	August 24, 2022	Mon., Nov. 21, 2022

##### (A) Motions in Limine/*Daubert* Motions.

Under LR 16-3(b), any motions in limine, including *Daubert* motions, shall be filed and served 30 days prior to the commencement of Trial. Oppositions shall be filed and served and the motion submitted for decision 14 days thereafter. Reply briefs will be allowed only with leave of the Court.

1           **(B) Pretrial Order.**

2           Pursuant to LR 26(1)(e)(5), the Joint Pretrial Order shall be filed with this Court no later  
3 than thirty (30) days after the date set for filing dispositive motions, unless dispositive motions  
4 are filed, in which case the date for filing the Joint Pretrial Order shall be suspended until 30  
5 days after the decision on the dispositive motions or further order of this Court. The disclosures  
6 required by Fed. R. Civ. P. 26(a)(3) and any objections shall be included in the final pretrial  
7 order.

8           **(C) Extensions or Modification of the Discovery Plan and Scheduling Order.**

9           In accordance with LR 26-3, applications to extend any date set by the discovery plan,  
10 scheduling order, or other order must, in addition to satisfying the requirements of LR 6-1, be  
11 supported by a showing of good cause for the extension. All motions or stipulations to extend a  
12 deadline set forth in a discovery plan shall be received by the Court not later than 21 days before  
13 the expiration of the subject deadline. A request made after the expiration of the subject deadline  
14 shall not be granted unless the movant demonstrates that the failure to set was the result of  
15 excusable neglect. Any motion or stipulation to extend a deadline or to reopen discovery shall  
16 include:

- 17           (a) A statement specifying the discovery completed;
- 18           (b) A specific description of the discovery that remains to be completed;
- 19           (c) The reasons why the deadline was not satisfied or the remaining discovery was  
20 not completed within the time limits set by the discovery plan; and
- 21           (d) A proposed schedule for completing all discovery.

22           This request for an extension is made in good faith and joined by all the parties in this  
23 case. The Request is timely pursuant to LR 26-3. Trial is not yet set in this matter and  
24 dispositive motions have not yet been filed. Accordingly, this extension will not delay this case.

Moreover, since this request is a joint request, neither party will be prejudiced. The extension will allow the parties the necessary time to complete discovery.

DATED this 25th day of April, 2022.

LAW OFFICES OF KEVIN R. HANSEN

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**ORDER**

IT IS ORDERED that ECF No. 26 is  
GRANTED to the extent that the Court adopts  
the parties' proposed deadlines on pages four  
and five.

IT IS SO ORDERED

DATED: 4:16 pm, April 26, 2022



BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE